

DON HOWARTH, Bar No. 53783
dhowarth@howarth-smith.com

PADRAIC J. GLASPY, Bar No. 259563
pglaspy@howarth-smith.com

HOWARTH & SMITH
523 West Sixth Street, Suite 728
Los Angeles, California 90014
Telephone: (213) 955-9400
Facsimile: (213) 622-0791

Attorneys for Plaintiff
SPITZ TECHNOLOGIES
CORPORATION

JOHN B. SGANGA, JR., Bar No. 116211
john.sganga@knobbe.com
SHEILA N. SWAROOP, Bar No. 203476
sheila.swaroop@knobbe.com
KNOBBE, MARTENS, OLSON & BEAR,
LLP
2040 Main Street, Fourteenth Floor
Irvine, California 92614
Telephone: (949) 760-0404
Facsimile: (949) 760-9502

Attorneys for Defendant
NOBEL BIO CARE USA LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

SPITZ TECHNOLOGIES
CORPORATION,

Plaintiff,

v.

NOBEL BIO CARE USA, LLC,
Defendant.

AND RELATED COUNTER-ACTION

Case No. 8:17-cv-00660-JVS-JCG

Hon. James V. Selna

**STIPULATION AND ~~PROPOSED~~
ORDER TO MODIFY
PROTECTIVE ORDER**

1 NOBEL BIO CARE USA, LLC (“Nobel”), on the one hand, and SPITZ
2 TECHNOLOGIES CORPORATION (“Spitz”), on the other hand, by and through
3 their counsel below, hereby stipulate as follows:

4 WHEREAS, on or about April 11, 2017, Spitz filed a lawsuit in this Court
5 against Nobel as the above-entitled action (the “Nobel Action”);

6 WHEREAS, Spitz was represented in the Nobel Action by the law firm
7 Michelman & Robinson, LLP (“Michelman”) and by the Quinn Emanuel law firm
8 (“Quinn”);

9 WHEREAS, this Court entered a Protective Order in this case on or about July
10 6, 2017, at Docket No. 28 (the “Protective Order”), which is incorporated by
11 reference herein;

12 WHEREAS, the Protective Order governed, in part, the protection of certain
13 documents produced in the course of the Nobel Action that were designated by the
14 parties as “CONFIDENTIAL BUSINESS INFORMATION”, and the use and
15 disclosure of documents and information so designated (“Protected Material”) was
16 restricted, including the restriction that said documents could only be used or
17 disclosed “only for prosecuting, defending, or attempting to settle this Action” and
18 that such documents “may be disclosed only to the categories of persons and under
19 the conditions described in this Order” [Dkt. 28 at ¶ 7.1];

20 WHEREAS, in the course of the Nobel Action, the parties did in fact produce
21 documents that were designated by the party producing them as “CONFIDENTIAL

1 BUSINESS INFORMATION” under the Protective Order;

2 WHEREAS, the Nobel Action was dismissed on or about September 6, 2019;

3 WHEREAS, after the resolution of the Nobel Action, Spitz has advised that a
4 potential dispute arose between Spitz and Michelman relating to this litigation;

5 WHEREAS, Spitz has advised that, in the course of assessing its potential
6 claims against Michelman, Spitz made a request for, and Michelman purported to
7 produce its client file for the Nobel Action, which file included documents produced
8 under and subject to the protections of the Protective Order entered by the Court in
9 this litigation;

10 WHEREAS, the terms of the Protective Order remain in full force and effect as
11 to the documents and information that were produced pursuant to it;

12 WHEREAS, Spitz has advised that it is represented in assessing its potential
13 claims by the law firm Howarth & Smith;

14 WHEREAS, under the terms of the Court’s Protective Order, neither Howarth
15 & Smith, nor any experts retained thereby, nor any mediator, arbitrator, or Court who
16 may preside over the litigation of the dispute between Spitz and Michelman are
17 permitted to obtain and review the documents designated under the Protective Order
18 because any disclosure or use of the documents would not be in connection with the
19 Nobel Action, and because such parties do not fit into the categories of individuals
20 permitted to view such documents under the Protective Order;

21 WHEREAS, Spitz has advised that documents designated by Nobel as

1 Protected Material are part of the client file owned by Spitz and are relevant to
 2 assessment of the Spitz claims and to the issues in the dispute between Spitz and
 3 Michelman;

4 WHEREAS, in order to minimize burden to Nobel, the parties to the Court's
 5 Protective Order and their respective counsel, agree that the terms of the prior
 6 Protective Order should be modified to permit the use of documents designated by
 7 Nobel as Protected Material in connection with Spitz's potential claims against
 8 Michelman;

9 WHEREAS, federal courts have jurisdiction to modify protective orders that
 10 they issue where they are still in force and effect, even after a judgment is final on a
 11 case. *See, e.g., Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 782–783 (1st Cir.
 12 1988) (“we find that, because the protective order was still in effect, the district court
 13 had the power to make postjudgment modifications to the protective order”); *FDIC v.*
 14 *Ernst & Ernst*, 677 F.2d 230 232 (2d Cir.1982); *Krause v. Rhodes*, 671 F.2d 212 (6th
 15 Cir.), *cert. denied*, 459 U.S. 823, 103 S.Ct. 54 (1982); *United States v. GAF Corp.*,
 16 596 F.2d 10, 16 (2d Cir.1979); *American Telephone & Telegraph Co. v. Grady*, 594
 17 F.2d 594, 596–97 (7th Cir.1978), *cert. denied*, 440 U.S. 971, 99 S.Ct. 1533 (1979);
 18 *Olympic Refining Co. v. Carter*, 332 F.2d 260, 265–66 (9th Cir.), *cert. denied*, 379
 19 U.S. 900 (1964); Marcus, *Myth and Reality in Protective Order Litigation*, 69 Cornell
 20 L. Rev. 1, 41–53 (1983); Note, *Nonparty Access to Discovery Materials in Federal*
 21 *Court*, 94 Harv. L. Rev. 1085, 1091–96 (1981); and

1 WHEREAS, good cause exists for this Court to enter the modifications to the
2 Protective Order [Dkt. 28], incorporated herein.

3 NOW, THEREFORE THE UNDERSIGNED COUNSEL AND PARTIES
4 HEREBY STIPULATE AS FOLLOWS:

5 1. The July 6, 2017 Protective Order entered by this Court in the Nobel
6 Action [Dkt. 28] shall be amended and modified as provided herein below to allow
7 for the use of documents designated by Nobel as containing Protected Material and
8 produced thereunder in connection with the dispute between Spitz and Michelman,
9 provided that Nobel is provided with notice of and has the ability to approve of
10 disclosure of its Protected Material prior to such disclosure being made, as set forth
11 below.

12 2. All provisions of the Court's prior Protective Order not amended,
13 modified, or inconsistent with the provisions herein shall remain in full force and
14 effect.

15 3. Information and/or documents that were designated by Nobel under the
16 Protective Order as "CONFIDENTIAL BUSINESS INFORMATION" may be used
17 for the limited purpose of evaluating, assessing, prosecuting, defending, or attempting
18 to settle the dispute between Spitz and Michelman. Such use of Protected Material
19 designated by Nobel shall be limited to the categories of persons and under the
20 conditions described in the Protective Order and this Stipulation and Modification.

21 ///

1 4. Information and/or Documents that were designated under the Protective
2 Order as “CONFIDENTIAL BUSINESS INFORMATION” may be disclosed to the
3 following persons:

- 4 (a) outside counsel representing Spitz (the Howarth & Smith firm),
5 Michelman, and any insurers thereof, including all paralegal assistants,
6 secretarial and stenographic and clerical employees working under the
7 supervision of such counsel, which outside counsel (with the exception
8 of the Howarth & Smith firm identified above) shall be identified to
9 Nobel prior to the disclosure of any CONFIDENTIAL BUSINESS
10 INFORMATION, and provided such outside counsel that has not signed
11 this Amendment executes an Agreement attached hereto as Exhibit A;
- 12 (b) court reporters, interpreters, translators, copy services, graphic support
13 services, document imaging services, and database/coding services
14 retained by such counsel, provided these individuals or an appropriate
15 company official with authority to do so on behalf of the company
16 executes an Agreement attached hereto as Exhibit A;
- 17 (c) experts or consultants (i) retained by any attorney described in Paragraph
18 4(a) to assist in connection with the dispute between Spitz and
19 Michelman, (ii) who is not a current employee of Spitz or Michelman,
20 (iii) who has no current or prior relationship with any competitor in the
21 dental implant industry; and (iv) provided such expert or consultant

1 executes an Agreement attached to the Protective Order as Exhibit A and
2 provides to Nobel a copy of his or her current CV, business address,
3 business title, business or profession, the existence of any previous or
4 current relationship (personal or professional) with Nobel or any of its
5 competitors, and all companies for which the expert or consultant has
6 consulted, advised, been employed by, or been a member of any
7 advisory or governing body for, within last four (4) years, and receives
8 confirmation that Nobel has no objection to disclosure of its Protected
9 Material to such expert or consultant prior to any such disclosure being
10 made;

11 (d) a person who prepared, received, or reviewed the Protected Material
12 prior to, or independent from, its production in the Nobel Action;

13 (e) a person, such as an attorney from the Michelman firm, who was
14 authorized to view the Protected Material in the course of pursuing or
15 defending the claims in the Nobel Action, provided that, prior to viewing
16 any Protected Material in connection with the dispute between Spitz and
17 Michelman, such an individual is identified to the opposing party and to
18 Nobel and executes an Agreement attached to the Protective Order as
19 Exhibit A;

20 (f) during depositions and preparation for depositions, a deposition witness
21 who is a current or former employee, officer, agent, contractor and/or

1 consultant of the party that produced the applicable document(s) or who
2 appears to have knowledge of the contents of the document designated
3 “CONFIDENTIAL BUSINESS INFORMATION” or the specific
4 events, transactions, discussions, or date reflected in the document,
5 provided such witness executes an Agreement attached to the Protective
6 Order as Exhibit A;

7 (g) any private mediators employed by the parties in connection with the
8 dispute, provided any such person executes the Agreement attached to
9 the Protective Order as Exhibit A; and

10 (h) any Court and/or arbitrator that presides over any proceedings in
11 connection with the dispute between Spitz and Michelman, and their
12 respective staff.

13 5. Within sixty (60) days of the resolution of the dispute between Spitz and
14 Michelman, and subject to the exceptions in paragraph 13 of the Protective Order,
15 Spitz and Michelman will provide written confirmation to Nobel that all Protected
16 Material exchanged in connection with the dispute has been destroyed. Final
17 disposition shall be deemed to be the later of (1) the last payment made pursuant to
18 any settlement between Spitz and Michelman of all claims by Spitz relating to
19 Michelman’s representation in the Nobel Action; (2) the dismissal of all claims and
20 defenses in any formal lawsuit filed by Spitz; (3) final judgment and completion or
21 exhaustion of all appeals, rehearings, remands, trials, or reviews in any formal lawsuit

1 filed by Spitz; and (4) the expiration of the statute of limitations on any claims
2 belonging to Spitz against Michelman.

3 6. Without written permission from the designating party or a court order
4 secured after appropriate notice to all interested persons, a party may not file any
5 Protected Material in any public forum or record prior to the trial of any dispute
6 between Spitz and Michelman, without first giving reasonable notice to the
7 designating party and attempting to file such material under seal. A Party that seeks
8 to file under seal in any action brought by Spitz against Michelman any Protected
9 Material must comply with the applicable rules and procedures as govern any such
10 action. If the request to file any Nobel Protected Material under seal is denied by the
11 court in any such action, then the Party shall immediately notify Nobel and shall not
12 file the Protected Material in the public record until Nobel has had the opportunity to
13 pursue appropriate relief. Nobel shall have thirty (30) days to apply to the relevant
14 court for relief. If no such application or motion is brought in that time, the Nobel
15 Protected Material may be filed in the public record. If Nobel does apply to the
16 relevant court in that time period, no Nobel Protected Material shall be filed in the
17 public record until the court rules on any application or motion brought by Nobel.

18 7. The use at trial of any Protected Material produced and designated
19 pursuant to the Protective Order shall be governed by a separate order from the court
20 that hears the dispute between Spitz and Michelman. Spitz shall immediately notify
21 Nobel if it initiates an action in any court regarding its dispute with Michelman. Any

1 party seeking to restrict the use of any Protected Material at the trial of any such
2 action shall apply to the court to apply whatever protection it deems necessary. In
3 order to give any designating party the opportunity to apply for protection of its
4 Protected Material at trial, any party seeking to introduce such Protected Material
5 shall notify the relevant designating party by email no later than fifteen calendar days
6 prior to the anticipated use of the Protected Material and provide notice to the
7 designating party of its intent to use the Protected Material. Notice to Nobel shall be
8 provided to the following:

9 Robert Schwimmer: Robert.Schwimmer@envistaco.com

10 Gail Katz: Gail.Katz@envistaco.com

11 John Sganga: John.Sganga@knobbe.com

12 Sheila Swaroop: Sheila.Swaroop@knobbe.com

13 IT IS SO STIPULATED.

14 Dated: March 19, 2021

HOWARTH & SMITH

15 By: /s/ Don Howarth
Don Howarth

16 Attorneys for SPITZ TECHNOLOGIES
17 CORPORATION

18 Dated: March 19, 2021

KNOBBE MARTENS

19 By: /s/ Sheila Swaroop
Sheila Swaroop

20 Attorneys for NOBEL BIO CARE USA,
21 LLC

Attestation of Filing

I, Don Howarth, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order to Modify Protective Order. In compliance with Local Rule 5-4.3.4, I hereby attest that the above signatories have concurred in this filing's content and have authorized this filing.

Stipulated Protective Order

Good cause appearing therefore, the Court hereby Orders that the Above Modifications to the Protective Order issued in the above-entitled case are granted. All provisions not inconsistent with the above modifications shall remain in full force and effect.

IT IS SO ORDERED.

Dated: March 25, 2021



Honorable James V. Selna
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on in the case of *Spitz Technologies Corp., v. Nobel Biocare USA LLC et al.*, Case No. 8:17-cv-00660-JVS-JCG, and the modification thereto. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, as modified, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt.

I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order, and its modifications.

///

1 Date: _____

2 City and State where sworn and signed:

3 _____

4 Printed name: _____

5 Signature: _____

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21